

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16318 of Shew F. Hom and Sau W. Hom, pursuant to 11 DCMR 3107.2 for a variance from the use provisions of Subsection 201.1 to allow a two-unit apartment (two-family flat) on the first and second floors of an existing building in an R-1-B District at premises 3624 Norton Place, N.W. (Square 1914, Lot 46).

Hearing Date: February 18, 1998

Decision Date: February 18, 1998

ORDER

SUMMARY OF EVIDENCE:

The property which is the subject of this application is located at premises known as 3624 Norton Place, N.W. (Square 1914, Lot 46). The property is developed with a residential structure with a basement and two floors above ground. It also contains an attic.

The applicants reside at 3626 Norton Place, next door to the subject site. When the applicants purchased the subject property in 1976, it was divided into three separate units. These units were being rented by the previous owner of the property. The applicants continued renting the property and later learned that they would need a certificate of occupancy to do so. The property is zoned R-1-B which allows single family dwellings as a matter of right. The applicants propose to rent out the first and second floors, however, the basement level will not be rented. The basement will be used as storage space by the applicants. Therefore, the property would be deemed a two-unit flat, a use that is not allowed in the R-1-B District. To bring their property into compliance with the Zoning Regulations, the applicants are seeking a use variance to allow the proposed use at the site.

Issues And Arguments:

1. Whether there exists a unique or exceptional situation or condition related to the property, which creates an undue hardship upon the owner in complying with the Zoning Regulations?

The applicants testified that the property is unique because it has been divided into three units at least since the mid-1950s. When they purchased the property in 1976, there were still three units in the building. The contract of sale indicated that there were three refrigerators and three stoves on the property. The appraisal of the property dated June 30, 1997 indicates that the first floor contains the foyer, a living room with fireplace, a dining room, a kitchen, a full bath and a den. The second floor contains a kitchen three bedrooms and a full bathroom. There is a full finished basement with a commode and sink, and there are steep stairs to finished storage area on the third floor.

The applicants stated that it would be an undue hardship for them to have to convert the structure to single-family use. This would require extensive interior structural renovations.

Verna Movern, a neighbor who has resided at 3622 Norton Place since 1954, testified that she believes that the owner of 3624 Norton Place at that time rented the property to students. However, she stated that she never saw the interior of the structure. The applicant introduced into the record three letters from property owners in the area who stated that the subject property has been a rental property since the 1950s.

Four neighbors testified in opposition to the application. Three neighbors were granted party status. They are Susan Seligmann of 3613 Norton Place; Louise Mann-Kenney of 3420 36th Street and Elizabeth Noyes of 3611 Norton Place. Mr. Peter Seligmann of 3613 Norton Place testified as a person in opposition to the application.

The opposing neighbors stated that they were unaware of any other houses with multiple units on their block, but indicated that it is possible that some are located there. The opposing neighbors pointed out that on Wisconsin Avenue, there are a number of rental properties, but the Board noted that they are zoned R-5-B, not R-1-B like the subject property.

2. Whether allowing the proposed flat use would be of substantial detriment to the public good?

The opposing neighbors testified that to allow multiple-unit houses on their street would create problems in terms of parking, traffic, numbers of people and trash. However, they conceded that they have not had problems with the property owned by the applicants. They asked that the Board limit any approval of the variance to the applicants in this case. They were informed by the Board that variances are not applicant-specific but run with the land.

Responding to the issue of substantial detriment raised by the opposing party, the applicants stated that they have not created problems in the neighborhood by using this property for rental units.

3. Whether allowing the proposed use would impair the intent, purpose and integrity of the zone plan?

The applicants maintain that granting the application would not impair the intent, purpose and integrity of the zone plan. They maintain that they are trying to bring their property into compliance with the Zoning Regulations by seeking relief to enable them to apply for a certificate of occupancy. They testified that, to their knowledge, and based on conversations with neighbors who have been in the community for many years, the property has been nonconforming since the mid-1950s and that this nonconforming use has not been discontinued.

Parties in opposition to the application argued that granting the application would impair the zone plan. They noted that the property is located in the Cleveland Park Historic District. They expressed their strong interest in their historic neighborhood and testified that they wanted to maintain the integrity of that neighborhood and keep the community in tact and protected.

They noted that the Zoning laws are intended to help them in this regard. In their view, allowing a multiple-unit dwelling to operate on Norton Street would set a precedent for other such uses to locate there. The neighbors were very concerned that approving this application would change the zoning in the area. However, the Board assured the opposing witnesses that the zoning classification would remain in tact and that variances are granted only if certain standards are met. Further, variances only relate to specific pieces of property, not to the entire district. Therefore, the R-1-B zoning classification would not be altered by granting the instant application.

Mrs. Kenny testified that Norton Place consists of a single-family block of 11 residences and goes from the property of the Rosedale historic estate to Wisconsin Avenue. She indicated that it is their goal to protect these single-family residences and the domestic quality of this small tree-shaded street. This thin line of residences serves as a buffer to the commerce and traffic of Wisconsin Avenue.

Mrs. Kenny further testified that parking is a great problem. Any extra residents add to the parking and traffic. The area is pretty crowded and any extra families would change the complexion of the neighborhood.

Mrs. Seligmann testified that the multiple-family dwellings have started creeping into the neighborhood. It started around the corner with the property located on the corner of Norton Place and Wisconsin Avenue. The property is owned by Mr. Geriakas. His property was converted from a single-family home into numerous dwellings units. She estimated that there are at least eight units in the building. She also noted that the property on the corner opposite the alley where the applicants live was formerly a single-family dwelling. She believes that these multiple-family types of structures are going to invade the neighborhood.

Mrs. Seligmann testified that parking and trash are big problems in the alley in her neighborhood. She stated that the houses have garages but there are a number of homes in the alley that have converted the garages into apartments. However, she indicated that she has not been inside, nor was she sure about the living arrangements involved.

Mr. Seligmann also testified as an opponent to the application. He stated that the commercial owners on Wisconsin Avenue have an interest in converting much of Wisconsin Avenue and the adjacent streets into multiple-family dwellings. He made note of one of the three letters entered into the record from people in the area that maintained that the subject property had rental units since the mid 1950s. He noted that one of the letters was from Mr. Geriakas, a man who has a commercial interest in the area. However, he was unsure about what the signatories of these letters knew about the history of the applicants' property.

The Advisory Neighborhood Commission

Advisory Neighborhood Commission 3-C, by letter dated January 27, 1998 expressed its support for the application. The ANC noted that it was not convinced that the application meets the criteria set forth for obtaining a use variance, but the use has in fact been in existence for some time and the ANC is not aware of any complaints by neighbors related to the use.

Therefore, the ANC indicated that it has no objection to the application but defers to the Board on whether the use variance test has been met.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The subject property has been rented as multiple units since the mid-1950's. This multiple-unit use predates enactment of the Zoning Regulations.
2. No other properties in the R-1-B zoned area were shown to have also been used as rental property for over 40 years.
3. To bring the property into compliance with the Zoning Regulations, which requires single-family use, the applicants would have to reconfigure the entire interior of the house to eliminate kitchens and other rooms, as appropriate.
4. Use of the subject property as rental units has not been shown to cause problems in the neighborhood in terms of noise, traffic, parking, trash, or other adverse impacts.
5. The area surrounding the subject property has a number of zoning classifications, some of which are less restrictive than the subject property's zoning classification of R-1-B. The less restrictive zone districts allow for multiple-unit dwellings and commercial uses without relief from the Board of Zoning Adjustment.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicant is seeking a use variance to allow a two-unit flat in an R-1-B District. The granting of such a variance requires a showing through substantial evidence in the record that there is some unique or exceptional situation or condition related to the property which creates an undue hardship for the owner in using the property in compliance with the Zoning Regulations. The applicant must also demonstrate that granting the application would not be of substantial detriment to the public good, nor would it impair the intent, purpose and integrity of the zone plan. The Board concludes that the applicant has met this burden of proof.

The Board concludes that the unique condition facing the owners is the fact that the property has been used as rental units since before enactment of the Zoning Regulations in 1958. It would be an undue hardship on the owner to reconfigure the interior of the structure to be a single-family residence after over 40 years of use as rental units.

The Board notes that the applicants only propose to rent two units of the property - the first and second floors. The Board concludes that use of this property has not created problems for the neighborhood in terms of traffic, noise, trash, or parking and therefore granting this application would not be of substantial detriment to the public good.

The Board concludes that concerns have been expressed that granting this application would set a precedent for the encroachment of multiple-family residential structures in the area. These concerns are tempered by the fact that any such use, if proposed, would have to meet the use variance standards met by these applicants. Because the opposing residents who testified were unaware of any other structure in their community (with R-1-B zoning) that has had rental units that predate the Zoning Regulations, it is unlikely that other similar applications would be able to rely on this order as a precedence. Consequently, it is unlikely that they would be approved by this Board.

The Board notes that the commercialization of Wisconsin and Connecticut Avenues is a result of the commercial zoning of that area. Also, the Board notes that there are portions of Norton Street with less restrictive zoning than that of the subject property and of the opposing neighbors. This would explain the existence of multiple-family dwelling units located at the end of the street, as testified to by one of the opposing parties.

The Board is of the view that allowing this one property to maintain its multiple-unit configuration would not impair the intent, purpose or integrity of the zone plan, given the exceptional situation related to the property.

The Board concludes that it has accorded the Advisory Neighborhood Commission the great weight to which it is entitled.

In light of the foregoing analysis, the Board hereby **ORDERS** that the application is **GRANTED, SUBJECT** to the following **CONDITION**:

1. The property located at 3624 Norton Place shall be used for no more than two-units.

VOTE: **4-0** (Susan Morgan Hinton, Betty King, Jerrily R. Kress and Sheila Cross Reid to grant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

Sherry W. Rose
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

Final Date of Order: NOV 30 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE,

TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Order 16318TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16318

As Interim Director of the Office of Zoning, I hereby certify and attest that on NOV 30 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. Shew F. Hom
3626 Norton Place, N.W.
Washington, D.C. 20016

Mrs. Susan M. Seligmann
3613 Norton Place, N.W.
Washington, D.C. 20016

Mrs. L. Mann-Kenney
3420 36th Street, N.W.
Washington, D.C. 20016

Elizabeth Ross Noyes
3611 Norton Place, N.W.
Washington, D.C. 20016

Phil Mendelson, Chairperson
Advisory Neighborhood Commission 3-C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Attested By:

Tracy W. Rose
for SHERI M. PRUITT-WILLIAMS
Interim Director

Date: NOV 30 1998